SPEECH

OF

HON. LUCIUS B. PECK, OF VERMONT,

IN THE HOUSE OF REPRESENTATIVES, APRIL 23, 1850,

In Committee of the Whole on the state of the Union, on the President's Message transmitting the Constitution of California.

Mr. PECK said:

Mr. CHAIRMAN: We have before us the special message of the President, in which he recommends the admission of California as a State, when she shall present herself for admission. He also advises Congress to establish no territorial governments over that portion of our acquisitions from Mexico which is not included within the limits of California. The first recommendation has my approval, and from the other I dissent.

California now presents herself, with her constitution, and claims admission as a State. This claim is made under the Federal Constitution, which provides that Congress may admit new States, and is enforced by a reference to the provisions of the treaty with Mexico, the ninth article of which stipulates, that those Mexicans who may choose to remain in the ceded territory, "shall be incorporated into the Union of the United States, and be admitted, at the proper time, (to be judged of by the Congress of the United States,) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution," &c. Ought her claim to be rejected? Certainly not; considering the rights of her citizens under the Constitution and treaty, unless for some good and weighty reasons. Her constitution is republican, and no objection is taken to its provisions, unless it be to that portion of it which defines her boundaries. Various objections have been started, the most prominent of which are, 1. That Congress have, by no act, authorized the people to form a State government; 2. That the people who have formed the constitution are adventurers from all parts of the world, of every hue and color, and located there for a mere temporary purpose; 3. That the boundaries, as described in the constitution, are too extensive.

No legislation on the part of Congress is required to confer upon the people of a territory the right to form a State government. It is conceded on all hands that Congress cannot create a State. Where, then, resides the power of forming a State government? With the people, the source of all power in a free government. If this power rests with the people alone, what necessity of the previous assent of Congress to the formation of a State government? It cannot add to, or enlarge a power, which exists independent of all legislation on the part of Congress. From what source is derived this doctrine of the necessity of a previous assent on the part of Congress, now put forth? Certainly not from the Constitution, for that is silent on the subject. It has not even the authority of uniform precedent to support it, for a majority of the States have been admitted without any previous action of Congress. Congress never authorized Vermont, Kentucky, Tennessee, Maine, Arkansas, Michigan, Florida, Texas, or Iowa, to form State governments. The people of those States, in convention, formed their constitutions, and, on application, were admitted into the Union. Why may not California be admitted with equal propriety? Why single her out, and insist upon a rule which was not applied to those other States? If this previous assent is not a constitutional requirement—and it is not even claimed that it is—may it not be waived? May it not be dispensed with on the part of Congress? The gentleman from Mississippi [Mr. FEATHERSTON] stated, in committee, a few days since, that there was no precedent justifying the admission of California; that those States which had been admitted without the previous action of Congress, were not formed from territory acquired from a foreign power. Florida was ceded to this Government by Spain, but it is true she was subjected to a territorial government for some years before her admission. But how does this alter the principle?

It is also insisted that California should be refused admission on account of the character of her population. What evidence have we that all who took part in the formation of her constitution do not intend to remain domiciled there? It is quite possible that all do not. But what portion of them intend to leave? What proportion of the votes should be excluded on this ground? There is the difficulty and injustice of rejecting the application. Similar objections were urged against the admission of Louisiana, but they were not permitted to control the action of Congress. Neither have we any evidence that foreigners were permitted to vote. So far as we have any evidence, it appears that the right of voting was confined to the citizens of the United States, and to those who were entitled to that privilege under the treaty with Mexico.

Similar objections might have been urged in the application of Tennessee and Illinois as they were in the case of Louisiana. On the adoption of the Illinois constitution, all persons of the age of twenty-one years, who had resided six months in the territory, were permitted to vote. Under this regulation, aliens voted. By the constitution of Michigan, foreigners were permitted to vote. In Tennessee, free negroes were admitted to the rights of freemen, and continued to vote at elections until the consti-

tution was changed in 1835. Was this objection ever raised before, except in the case of Louisiana, on the application of a State for admission into the Union? It is believed that no other instance can be found in the history of Congress, where this objection was started. Sir, who is to settle this right of the elective franchise? What have Congress to do with it? It is a matter to be settled by the people of the territory. It is under their sole control.

It is further urged, that the boundaries of the State, as described in the constitution, embrace too much territory. It is believed that Texas contains a greater number of square miles. If her western boundary, as claimed by Texas, be the true one, she is the largest State.

But why not permit the people of the territory to settle this question as they have done? They have the right to form their own organic law, and would it be just to deny them admission into the Union because some of us may entertain the opinion that her limits are too extensive? Michigan, Tennessee, and Iowa fixed their own limits, and Congress admitted them into the Union. Why not yield to California the same right? When you come to consider the topography of the country, the character of the soil, and the nature of the climate, this objection loses much of its force. There is good reason for believing that several of the States have more arable land, and are capable of sustaining a larger population, than California. The country is cut up by mountains and high ridges, and much of that portion of it that is capable of being tilled cannot be made productive for the want of means of irrigation. Who doubts that Pennsylvania can maintain and feed a much larger population than California? The main resources of the latter State will be found in grazing, in commerce, and in her minerals, while she will be dependent, to some extent, upon other nations for her breadstuffs.

It has been said in the course of the debate, that the influence of the Executive was interposed to induce the formation of her constitution. Admitting this to be true, are the people to be refused a State government, their rights forfeited, in consequence of the action of the President, when that action was neither sought nor desired by the people, so far as we have any evidence? But this charge is denied by the friends of the Executive, and I have seen no evidence to satisfy my mind that the charge has any foundation in fact.

Sir, I am apprehsive that there is a provision in this constitution which constitutes the real objection, in the minds of southern gentlemen, to the admission of this State. I allude to that article which excludes slavery. This has not been put forward as an objection. By some it has been expressly disclaimed as such; yet one is constrained to believe, that did the organic law admit the existence of slavery, we should not have found the opposition coming from the quarter it now does. Does any southern gentleman question the right of the people to decide for themselves whether they will tolerate or exclude slavery? When the Missouri question was before Congress, Mr. Pinkney, who denied the power of Congress to control the constitution of a new State, held this language:

"No man can contradict me when I say, that, if you have this power, you may squeeze down a new-born sovereign State to the size of a pigmy, and then taking it between your finger and thumb, stick it into some niche of the Union, and still continue, by way of mockery, to call it a State in the sense of the Constitution. You may waste its shadow, and then introduce it into a society of flesh and blood, an object of scorn and derision. You may sweat and reduce it to a thing of skin and bone, and then place the ominous skeleton beside the ruddy and healthful members of the Union."

So long ago as 1820 this was the principle southern statesmen adopted and urged upon Congress. President Polk, in his message of December, 1848, reiterates the same doctrine. He says:

"Whether Congress shall legislate or not, the people of the acquired territories, when assembled in convention to form State constitutions, will possess the sole and exclusive power to determine for themselves whether slavery shall or shall not exist within their limits. If Congress shall abstain from interfering with the question, the people of those territories will be left free to adjust it as they may think proper when they apply for admission as States into the Union."

Mr. Calhoun, in a speech delivered in the Senate in February, 1849, recognizes the same principle in the most explicit language:

"I hold it to be a fundamental principle of our political system that the people have a right to establish what government they may think proper for themselves; that every State about to become a member of this Union has a right to form its own government as it pleases; and that, in order to be admitted, there is but one qualification, and that is, that the government shall be republican. There is no express provision to that effect, but it results from that important section which guaranties to every State in this Union a republican form of government."

State Democratic conventions held in Georgia in 1847 and 1848, passed resolutions embracing the same doctrine. In January last, the Legislature of Texas, among a series of resolutions, unanimously adopted the following:

"*Resolved*, That it is a fundamental principle in our political creed, that a people in forming a constitution have the unconditional right to form and adopt the government which they may think best calculated to secure their liberty, prosperity, and happiness; and that in conformity thereto no other condition is imposed by the Federal Constitution on a State, in order to be admitted into this Union, except that its constitution shall be strictly republican; and that the imposition of any other by Coogress would not only be in violation of the Constitution, but in direct conflict with the principle on which our political system rests."

Sir, there is no political question upon which southern statesmen, and the South generally, have better agreed, and to which they are more committed, than upon the right now claimed by the people of California to determine for themselves their own organic law. Never was there a time either, when so pressing a necessity existed for the admission of a State as is now presented in the case of California. We have extended our revenue laws over the territory, thus compelling her citizens to contribute to the support of the General Government; but have neglected to provide any government for their protection. She is almost without the protection of law. The rapid increase of her population and commerce has hardly a parallel in the history of this country. Foreigners are pouring into her valleys in numbers so great as to endanger the rights and safety of our citizens. Her valuable minerals, the property of the people of the Union, are dug from her soil and taken from the country by the foreign adventurer. While every principle of justice, and the best interests of the whole country imperiously demand her immediate admission into the Union, that admission is opposed on the ostensible ground of alleged irregularity and informality in the formation of her Constitution. Sir, it seems to me—and I say it with

all due respect to the opinions of others—that this is not the *forum* nor this the occasion when such objections should be heard; clear it is, in my judgment, that they should not be entertained. Questions of national importance, involving high political considerations, should not be controlled by matters of mere form.

Sir, the inhabitants of California, particularly that portion of them who were formerly Mexican citizens, have the strongest possible claim upon this Government for admission into the Union. The faith of the country is, to some extent, pledged to the measure. In the instructions given to General Kearny by the Executive, under date of June 3d, 1846, we find this language:

"Should you conquer and take possession of New Mexico and California, you may assure the people of those provinces, that it is the wish and design of the United States to provide for them a free government, with the least possible delay, similar to that which exists in our territories. They will be then called to exercise the rights of freemen in electing their own representatives to the territorial legislature."

Acting under these instructions, General Kearny, in March, 1847, issued his proclamation to the inhabitants, in which he says:

"It is the wish and intention of the United States, to procure for California, as speedily as possible, a free government, like that of our territories, and they will very soon invite the inhabitants to exercise the rights of free citizens in the choice of their own representatives, who may enact such laws as they may deem best adapted to their own interest and well-being."

In July, 1847, Commodore Sloat, when he landed at Monterey, held the same language in a proclamation which he issued. These assurances were confirmed by Commodore Stockton's proclamation as Governor of California, published in August, 1847. These provinces were conquered, and, by the treaty of peace, ceded to this country. What effect these proclamations had upon the conduct of the inhabitants, it is difficult to determine; but the assurances made by those acting under the authority of the Government have not been carried out. No government has been established. We ought not to lose sight of the obligations imposed upon us by the acts of the authorized agents of the Government, and by the terms of the treaty. By the ninth article of the treaty, Congress, it is true, is to determine the time when they shall be admitted into the Union. The matter is left to the discretion of Congress; but in order to carry out in good faith this stipulation, the discretion to be exercised should be a sound one, one not influenced by caprice, or controlled by formal objections. These Mexican citizens, in conjunction with American citizens who have emigrated from the different States of the Union, now claim to be admitted. Considering all the circumstances of the case—the population of the territory and its character, the extent of her commerce, and the necessity of some regularly organized government, can any one seriously doubt that it is the duty of Congress, in the proper exercise of its discretion, to admit her as a State? Sir, it will be recollected that the treaty with the French Republic, by which we acquired Louisiana, contained a stipulation very similar in its terms to the ninth article of the Mexican treaty. It will also be remembered, that when Louisiana applied for admission, the application met with serious opposition from northern statesmen, on constitutional grounds—they insisting that Congress had no power, under the Constitution, to acquire foreign territory and admit it as a State. The question was much discussed, and Mr. Poindexter, the delegate from the then territory of Mississippi, after replying at great length to the various arguments urged against her admission, and referring to the third article of the treaty, put an inquiry which is not inappropriate to the present case: "And are we here sitting to deliberate whether we will perform the solemn engagements which have been entered into by the constituted authorities, and which are presented to us in the imposing attitude of the supreme law of the land?" Sir, what satisfactory response could we make, on the present occasion, to a similar inquiry? None, in my judgment. France was then all powerful, and could enforce the due observance of any treaty stipulation with a foreign power. This Mexico cannot do; but this fact does not lessen our obligations.

Some gentlemen on this floor have expressd a determination to go for the admission of California, *provided* they can be assured that proper legislation shall be adopted with regard to the residue of the acquired territory. That is to say, if Congress will establish territorial governments for that territory and not exclude slavery, they will yield their assent to her admission. Now, sir, let me inquire what connection have these questions? Are they not entirely independent of each other? Shall the people of California be deprived of their rights—denied admission into the Union—because Congress may not pass such laws for another people as gentlemen think ought to be passed? Is this any more or less than saying to an individual, sir, I will not deal justly with you unless A deals justly by B? This is a novel principle to be applied to matters of legislation.

Sir, I have already said that I believe the real objection to the admission of California is found in that provision of her constitution which excludes slavery. This opinion is based, in part, upon declarations made on this floor, and upon the report made by a committee of the Legislature of Georgia, during the past winter, in which the admission of California, with her present constitution and limits, is regarded as objectionable as the adoption of the Wilmot proviso; and either seems to be treated as a sufficient reason for secession from the Union. When we consider that no constitutional question is involved in the act of admission, and that the right of the people of a territory to form their own constitution, has been heretofore universally conceded by the South, the position now assumed must strike every one with surprise. On this point I desire to call the attention of the committee to the debate in 1811, on the bill to permit Louisania to form a State government, and particularly to the speech of Mr. Poindexter, of Mississippi, in reply to Mr. Quincy, of Massachusetts. The latter gentleman was most violent in his opposition to the bill, and in the course of his speech, said:

"It was his deliberate opinion that, if the bill passes, the bonds of this Union are virtually dissolved; that the States which compose it are free from their moral obligations, and that as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation—amicably if they can, violently if they must."

Mr. Poindexter thus rebuked him:

"Mr. Speaker, I enter with lively sensibility on that portion of the remarks made by the honorable gentleman from Massachusetts, which menace insurrection and dissolution

of the Union. Had these sentiments fallen from the gentleman in the ardor of debate, while the imagination was inflamed with an unconquerable zeal to prove the impolicy of the measure under consideration, or had they been offered in the shape of possible results, I should have regarded them only with pity and contempt. Influenced by a desire to stamp on these expressions their merited disgrace, and to preserve dignity and decorum in our deliberations, I felt it my duty to call the gentleman to order. * * * * I am still impressed with a conviction that these sacred walls—the sanctuary of the liberties of the American people—ought not to be polluted by direct invitations to rebellion against the Government of which we are a constituent part.

"The notorious conspiracy of Aaron Burr had for its basis the detestable project of dismembering the Union. * * * And yet that man did not dare go the lengths which the gentleman from Massachusetts has been permitted to go within these walls. Did Aaron Burr, in all the ramifications of his treasonable projects, ever declare to an assembly of citizens, 'that the States were free from their moral obligations?' and that as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation—peaceably if they can, violently if they must?' No, sir. Had such expressions been established by the evidence on his trial, I hazard an opinion that it would have produced a very different result. Perhaps, sir, instead of exile, he would have been consigned to a gibbet: for it cannot be concealed that the language of the gentleman from Massachusetts, if accompanied by an overt act, to carry the threat into execution, would amount to treason, according to its literal and technical definition in the Constitution and laws of the United States. The fate of Aaron Burr ought to be a salutary warning against treasonable machinations—and if others having the same views do not share a similar fate, it will not be because they do not deserve it."

Such, sir, was the strong and emphatic language of merited rebuke which fell from the patriotic lips of Mississippi's representative in 1811. Then a northern member menaced insurrection and dissolution, if a southern State, in which slavery was recognized, was admitted into the Union. Slavery, however, was not the ground upon which the opposition was based. The admission was resisted on the alleged want of constitutional power in Congress to admit her. The legal right to admit California is not now questioned, but the objection to her admission is placed on other grounds falling far short of the important objection taken to the admission of Louisiana. In the one case, the opposition rested upon high constitutional grounds; in the other, upon a question of mere expediency—upon alleged informalities. And yet, sir, language which in 1811 was regarded by the South as "pollution" in this Hall, and as an "invitation to rebellion," is substantially the language of a portion of the South in 1850. Sir, a distinguished gentleman from the South, [Mr. Brown, of Mississippi,] during the present session, said upon this floor, "My own opinion is this, that we 'should resist the introduction of California as a 'State, *and resist it successfully;* resist it by our votes 'first, *and lastly by other means. We can, at least, 'force an adjournment of Congress without her admis-'sion.*" Sir, I do not stop to comment on this language, or to inquire what is meant by "other means." Every one must draw his own conclusions. Among other things, it may be well to remember that the recommendation for the admission of California, is not an *aggression* on the part of the North. It is a measure proposed by a southern President, the favorite candidate of the South, acting under the advice of a Cabinet composed of a majority of southern men. Sir, I do not go for this measure because it has the recommendation of the Executive; but I support it for the reason that, in my judgment, our obligations to the people of California, their interests and that of the whole Union, imperiously demand its adoption.

I now proceed to a consideration of the recommendation of the President, that no territorial governments be formed. I cannot bring my mind to adopt this recommendation. I must oppose it for the same reason that I approve the recommendation for the admission of California. I have already referred to the proclamations of the officers of this Government to the people of California. They were also addressed to the people of New Mexico. These proclamations contained the strongest assurances that territorial governments should be established. The ninth article of the treaty stipulates, that until States are formed out of the territory and admitted into the Union, the people "shall be maintained and protected in the free enjoyment of their liberty and property." How can this be effectually done without creating territorial governments? The situation of these citizens, and our obligations to them, demand at our hands the establishment of some form of government for their protection and security. It is not sound policy to turn a deaf ear to their demands. But my objection to this recommendation does not rest here. I do not believe that a postponement of the action of Congress on this subject is either wise or expedient in any point of view. Sir, I am not of that number, if there are any such, who have anything to gain by keeping open this slavery question, which is intimately connected with the territorial question. I desire to see it settled, and settled, too, in accordance with what I believe to be the wishes of three-fourths of the people of the Union, by excluding slavery from the territories. The best interests of the country, the quiet and peace of the people, demand its adjustment at the earliest possible moment. The longer it remains an open question, the more excited will become the public mind both North and South. Delay will only augment sectional prejudice and embitter public feeling. The sooner a controversy between individuals or between communities is settled, the better for all parties. All experience proves this to be true. Permit this to remain an open question, and it becomes a controlling element in the next presidential election. That election will then assume a sectional character. The contest will be one of the bitterest and most exciting character, in which one part of the Union will be arrayed against the other. Sir, who desires to witness such a condition of things? The last election, if not controlled, was much influenced by this very element. At the South, the successful candidate was supported upon the ground that he was a southern man, and would support southern views and southern institutions; and by observing a studied silence upon the great question of the day, the North was induced to yield him their support, because they were told he was in favor of the ordinance of 1787. This was denied a few days since by the gentleman from Pennsylvania, [Mr. Chandler,] who insisted that General Taylor's support at the North, so far as related to the slavery question, was put upon the gound that he would not veto a bill prohibiting the extension of slavery to our territories. This view of the subject has been since reiterated on the same side of this Chamber. Now, sir, those of us who reside further north know very well that these gentlemen are mistaken. In the Boston Atlas of June 5

1848, the leading Whig paper of New England, under the editorial head, we find this significant language:

"Let them learn, [those Whigs who were opposed to General Taylor's election,] as they will learn, if they will not be deaf and blind to the truth—that General Taylor is a Whig in principle—is in favor of peace—opposed to all war—*believes slavery to be a curse to the country, and desires its extermination; and is opposed to the further extension of slave territory.*"

This was the language held, and these the assurances given to the electors of New England. Different language, we all have reason to know, was held in the South. Neglect to settle this territorial question, and no candidate will be supported at the next election for President, whose opinions upon the slavery question are not known and understood. A public declaration of those opinions will be demanded in every quarter of the Union. The people will not submit to be placed in a position where one portion of the community must be deceived. But how shall this question be settled? There is the difficulty, (it is not one with me,)—and for this reason, I suppose, we are advised by the Executive to pass no territorial bill. I will not charge the Administration with entertaining a desire to keep this question open for partisan purposes, as I do not know that the charge would be true. I am unwilling to believe that any public man, occupying an exalted station, would permit so unworthy a motive to control his action. Yet, sir, it is somewhat singular, that upon a question which has greatly agitated the public mind for the last two years, and which threatens, in the opinion of many, to disturb the peace and harmony of the Union, the President has not thought proper to indicate his views—to say whether he was for or against the extension of slavery—whether for or against the ordinance of 1787.

But what is the doctrine recommended by this Administration upon the subject of slavery as applicable to our territories? A policy repudiated by the last Congress—that of non-intervention, by non-action—a "masterly inactivity." It is to give the people of our territories no government—to insist upon their remaining in their unorganized condition, without any settled rules of law for their government and protection, until they shall form State governments—inhibiting or tolerating slavery as they shall determine—and then admit them into the Union as States. Sir, previous to the last Presidential election, General Cass adopted and put forth, in principle, the same platform. He insisted that this matter should be left to the sole determination of the people of the territories—that Congress had no control of the question. For this he was denounced by the Whig press of the North and West as being an ally of the South—that his doctrine, if adopted, would spread slavery over all our territories—that it was, in fact, the doctrine of the South. Now the same position is assumed by the Administration—but whether on the ground taken by General Cass, that Congress has not the constitutional right to legislate on the subject, or upon the ground that it is impolitic to legislate, we are not informed. What is the difference between the positions thus assumed, in their results? None at all. General Cass says we should not legislate upon the question of slavery, as we have no power to do it, but that it should be left to the people to regulate. The Administration say, establish no territorial governments—leave it to the people to form their own constitutions, and then admit them as States, with or without slavery, as they may elect. Is there any distinction to be made between non-intervention and non-action? None whatever. How can the Administration be approved for what was condemned in General Cass? But it is now said by one who occupies a distinguished place in Whig councils, [Mr. WEBSTER,] that the ordinance of 1787 should not be applied to our territories—that it is wholly unnecessary—that the "physical geography" of the country effectually excludes slavery. Sir, this was not the opinion of the last Congress—of the northern wing of the Whig party in and out of Congress. Mr. Clayton's compromise bill, as it was termed was formed on the basis of non-intervention. It proposed to establish territorial governments over California and New Mexico, without affirming or prohibiting the existence of slavery, and leaving the right of taking slaves into those territories to be determined by the judiciary. This was denounced by the Whig press of the North, and opposed by northern Whigs in Congress, on the ground of its non-intervention feature. Then we had Mr. Walker's amendment to the appropriation bill, which was opposed and defeated for the same reason. Sir, did time permit, I should like to read some extracts from Whig speeches, and from editorial articles in the Whig papers of the North, in which the non-intervention principle of those bills was condemned in the strongest language. Why, sir, the distinguished Senator from my own State, [Mr. PHELPS,] who supported Mr. Clayton's bill in a speech of great power, and upon the very ground now taken by Mr. WEBSTER, was censured for his course by a very large majority of his own party in that State. In speaking of this measure, the Atlas, of July 26, 1848, says:

"The best place to put such bills is on the table. Chloroform them."

The correspondent of this paper writes to the editors, under date of July 29, 1848, in relation to this bill and the vote to lay it on the table, saying:

"There is great exultation over the fact, that while every southern Democrat voted against the motion, twenty-one northern Democrats voted with them. Williams and Clark, of Maine, Birdsall, of New York, and nineteen other 'northern men with southern principles,' thus virtually expressed a desire to entail slavery in four great territories, in common with other friends of General Cass."

This, it will be remembered, was previous to the presidential election. Now it is passed—our Whig friends are in power—and now they go for the very measure, in its results, which they condemned in 1848. So much for their policy and consistency.

Sir, I desire to say that I go for establishing territorial governments, with the ordinance of 1787 ingrafted thereon. In doing this, I believe I am carrying out the wishes of nine-tenths of those whom I have the honor to represent on this floor.

I go for this measure, as I believe the interest of the whole country calls for its adoption, and that Congress have the constitutional power to pass it; that its adoption neither degrades the South, nor compromits its honor. I go for it, as I doubt whether the "physical geography" of the country will exclude slavery. Slavery was tolerated in these territories while under the dominion of Spain, and by the Mexican Government until 1824, when it was abolished. The character

of New Mexico is not unlike that of California, and if the climate and the character of the soil of the latter will exclude slavery, so it will in the former. Yet the convention that formed the constitution of California, by a unanimous vote, inserted a prohibition of slavery, not choosing to rely upon "physical geography" to exclude it. There is, unquestionably, great mineral wealth in New Mexico, and who can doubt that slave labor will be found profitable in mining operations? And wherever profitable, there it will go, if permitted.

But the power of Congress to inhibit the extension of slavery to these territories, is denied; and the passage of any law of this character is to be regarded by the South as a sufficient cause for a secession from the Union. I do not propose to discuss the question of power. As much as is profitable has, perhaps, already been said upon this subject. But it would seem that the exercise of this power by Congress, through a long series of years, should remove all serious doubts. Not that the exercise of a power which it is clear does not exist, will legalize and justify a continued exercise of that power, but when the question is one of doubt, the practice of the Government for a great number of years, without objection, should settle all controversy. Hardly a territorial government has been formed in which the action of the National Legislature has not borne upon this subject. The Constitution provides that Congress shall not prohibit the importation of slaves into the States prior to the year 1808. Yet, by an act passed in 1798, Congress did prohibit the importation of slaves into the territory of Mississippi. In the act establishing a territorial government for Louisiana, passed in 1804, is found this provision:

"And no slave or slaves shall, directly or indirectly, be introduced into said territory, except by a citizen of the United States, removing into said territory for actual settlement, and being at the time of such removal the *bona fide* owner of such slave or slaves: and every slave imported or brought into the said territory, contrary to the provisions of this act, shall thereupon be entitled to, and receive his or her freedom."

This act was passed during the administration of Mr. Jefferson, and received his assent. Both of these acts, which were passed soon after the formation of the Federal Constitution, and while many of the members of the convention were in Congress, or connected with the Government, assert the right to prohibit the importation of slaves into the territories of the Union from abroad. The act of 1804 goes further, and prohibits their introduction into Louisiana from any part of the United States, except in certain and specified cases. It permitted any citizen of the United States to take his slaves into that territory, if he removed there for the purpose of settlement, but in no other case was it permitted. It denied to the citizens of a slaveholding State the right to send or take their slaves into that territory for sale, while the citizens of the free States were permitted to send there for sale, every species of property recognized as such by the laws of those States. This act thus discriminated in favor of the people of the free States, and yet it does not appear to have been objectionable to the South. Now, the same discriminating principle of the proviso is regarded as peculiarly offensive to that portion of the Union. This act, too, asserts the very principle claimed by those who are in favor of the application of the ordinance of 1787—the right of Congress to exclude slavery from our territories. If Congress in 1804 had the constitutional right to limit, or in any way interfere with the introduction of slaves into our then territories, Congress then had, and now has, the right to prohibit their introduction *in toto*. This power has been since frequently exercised. This is not denied; but it is now claimed that all this legislation was a mere usurpation of power. Suppose this to be true; can the South be seriously affected by any subsequent legislation of a similar character? Most certainly not. An act which Congress has no constitutional power to pass has no validity; it is a dead letter, binds no one, affects the rights of no one.

But suppose a law prohibiting slavery in the territories should be passed? Would this justify a secession from the Union?—a breaking up of the Government? If the views of southern gentlemen were rightly understood, some of them, at least, claim this right of secession under the Constitution—that they are not bound to await the decision of the Supreme Court of the United States, or if one is made adverse to their views, they may disregard it. Can it be possible that this is the honest opinion of sober, rightminded men—of Statesmen! If this be a fair and correct exposition of the Constitution, it is indeed a "rope of sand." The framers of that instrument foresaw that cases might arise where individuals and States would question the power of Congress, and they wisely provided for this very difficulty by the creation of a national judiciary. The second section of the third article declares that "the judicial power shall extend to all cases in law and equity, arising under this *Constitution*, the laws of the United States," &c. By this provision the constitutionality of a law of Congress is to be determined by the Supreme Court. That is the tribunal to which the validity of a legislative act is to be referred, by the express terms of the Constitution; and the decision must be obligatory upon all. If the judgment is not to conclude all parties—States as well as individuals—if any one is at liberty to disregard it and treat it as a nullity, the insertion of that article in the Constitution was a useless act. The people of the several States, when they adopted the Constitution, adopted each and all of its provisions. They agreed to live under it, to be bound by it, to adhere to it in peace and in war. It is, then, part of the bond that they would submit to the judgment of the national judiciary on all constitutional questions. If this provision can be disregarded, each State is thus left to determine for itself the validity of every act of Congress; and whether she will submit to its authority. In short, she may nullify or yield her assent to the act according to her sovereign will and pleasure. This doctrine destroys the harmony and force of our Government. It treats the Constitution as mere waste paper. The right to nullify an act of Congress, to disregard the judgment of the judiciary in a given case, is not conferred by the Constitution. It is a remedy *without* the Constitution, not contemplated nor justified by it. The principle is revolutionary in its character. The great name of Madison has been invoked in support of the doctrine. The Virginia resolutions of 1798–9 have been referred to for the same purpose. In August, 1830, Mr. Madison in a letter

addressed to the editor of the North American Review, repudiates the doctrine, and denies that it is countenanced or justified by those resolutions. He says:

"Between these different constitutional governments—the one operating in all the States, the others operating separately in each, with the aggregate powers of government divided between them—it could not escape attention that controversies would arise concerning the boundaries of jurisdiction, and that some provision ought to be made for such occurrences. A political system that does not provide for a peaceable and authoritative termination of occurring controversies, would not be more than the shadow of a government—the object and end of a real government being the substitution of law and order for uncertainty, confusion, and violence. That to have left a final decision in such cases to each of the States, then thirteen, and already twenty-four, could not fail to make the Constitution and laws of the United States different in different States was obvious; and not less obvious that this diversity of independent decisions must altogether distract the Government of the Union, and speedily put an end to the Union itself."

Throughout the whole article Mr. Madison argues that the national judiciary was created for the very purpose of settling those controversies which might arise between the General Government and any of the States as to the constitutional rights and powers of either. If the existing provisions of the Constitution should not be found sufficient to protect the States against usurpations on the part of the General Government, the only remedy within the province of the Constitution, in his judgment, was in an amendment of the Constitution. "And in the event of a failure of every 'constitutional resort, and an accumulation of 'usurpations and abuses, rendering passive obe-'dience and non-resistance a greater evil than re-'sistance and revolution, there can remain but 'one resort, the last of all"—an appeal to the law of self-preservation. In such extremity, "but in 'that only, would a single member of the Union 'have a right, *as an extra and ultra-constitutional* '*right*, to make the appeal."

With regard to the resolutions of 1798-9, he says:

"In favor of the nullifying claim for the States individually, it appears that the proceedings of the Legislature of Virginia, in 1798 and 1799, against the alien and sedition acts, are much dwelt upon."

"It may often happen, as experience proves, that erroneous constructions not anticipated, may not be sufficiently guarded against in the language used; and it is due to the distinguished individuals, who have misconceived the intention of those proceedings, to suppose that the meaning of the Legislature, though well comprehended at the time, may not now be obvious to those unacquainted with the contemporary indications and impressions.

"That the Legislature could not have intended to sanction such a doctrine is to be inferred from the debates in the House of Delegates, and from the address of the two Houses to their constituents, on the subject of the resolutions. The tenor of the debates, which were ably conducted, and are understood to have been revised for the press by most, if not all, of the speakers, discloses no reference whatever to a constitutional right in an individual State, to arrest by force the operation of a law of the United States." * * * "Nothing is said (in the address) that can be understood to look to means of maintaining the rights of the States, beyond the regular ones, within the powers of the Constitution."

No man was more intimately connected with, or better understood, the import and scope of these resolutions, than Mr. Madison. He denies that they favor the doctrine of nullification, and treats the secession of a State as revolutionary in its character. Those, then, who contemplate forcible opposition to an act of Congress excluding slavery from the territories, or counsel secession, advise measures unknown to the Constitution, and look to revolution. Whether a measure of this kind will probably succeed, if attempted to be carried out—the position in which it will place its friends with the American people and in the judgment of the world and of posterity, every one must determine for himself.

Our southern friends insist that the people of the free States have no interest in this slavery question—that with them, it is a mere matter of feeling—while with the South, it is a matter of interest. The North does not regard the subject in this light. The laboring man of the North will not emigrate to slave territory. He believes that labor by the side of the slave is degrading—that slavery weakens the power of every Government which tolerates it. Most all the emigrants from Europe locate in free States. Why do they not go south? They are restrained by the same reasons that operate on the citizens of the free States. Have we, then, no *interest* in this question? And are the people of the North mistaken in their opinions as to the effect of slavery? If so, the error of that opinion must be charged upon some of the most eminent statesmen of the South who, have frequently expressed the same opinion. They spoke from their personal knowledge as to the character and effect of slavery. On the proposition made in the Federal Convention to prohibit the importation of slaves, Colonel Mason, of Virginia, said:

"The present question concerns not the importing States alone, but the whole Union. The evil of holding slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands." * * * "Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country."

Similar opinions of the effects of slavery have been often expressed by southern statesmen—by Washington, Jefferson, Madison, and Clay. No stronger language condemnatory of slavery can be found, than in the debates of the Convention in Virginia, in 1832. During the war of the Revolution, South Carolina, not having furnished her quota of troops, assigned as a reason for the omission, that they were required to protect themselves from their slaves. I refer to this subject in no spirit of reproach or unkindness, but in justification of the opinion of the North. In view of all these opinions and facts, can it be matter of surprise to southern gentlemen that the people of the free States are opposed to the extension of slavery? Can they be justly censured for their opinions as to its effect upon the prosperity of the country? Can it be said with truth that they have no *interest* in this question? They do, in fact, regard the extension of slavery as opposed to the best interests and the welfare of the country; and hence their great objection to its further extension.

Sir, the people of the free States have ever insisted, and still claim, that these great questions should be settled by a majority of the Representatives of the whole people; and if they involve any constitutional questions, that they should be determined by the judicial tribunal created for that express purpose. To the determination of questions thus made, they bow in obedience, whether favorable or adverse to their views. The right of the majority to rule is a *civil*, not a natural right. It is a right growing out of the organization of society, and recognized as such by the federal

compact. This right has been conceded to the majority by the people of the Union, by the adoption of the Constitution; it is *the* principle on which the Constitution is based; and when the action of Congress is confined to matters over which Congress has jurisdiction, the minority have no just ground of complaint. If Congress exceeds its constitutional powers, a corrective is found in the national Judiciary, or a repeal of the law may be effected by the action of the people.

Let us go back now, and see what has been the legislation of this country, and how it has affected the interests of the North and the South, and how the different sections of the Union have acted under it. In 1807 almost the entire capital of the eastern States was employed in foreign and domestic commerce. At that period but little attention had been given to manufacturing. All classes participated in the successful prosecution of the business operations of the country. In the midst of this prosperity, and hardly "with a note of warning," there came a blight on all their hopes in the form of the embargo. This act prostrated the whole business of the country, and beggared thousands. Ships rotted before the eyes of their owners, and men were forced to sit still and see their property melting away like snow under a vernal sun. For this there was no remedy. It was the effect of an act of Congress, passed for wise purposes—for the benefit of the whole country—and passed, too, by an almost unanimous vote of the southern delegation in Congress. Did the eastern States threaten a dissolution of the Union? Some individuals did, which, subsequently, they had cause to regret; but a great majority of the people thought of no such remedy, talked of no such remedy, though the act was more oppressive in its operation than any other law ever passed by Congress. The Legislatures of Massachusetts and Connecticut declared by resolutions that the act was unconstitutional. Petitions were presented to Congress representing the suffering which the act occasioned, and asking for its repeal. What was the reply to those petitions? A supplemental act, passed in 1809, more stringent and oppressive than the first. The only remedy left, under the Constitution, was resorted to. The power of Congress to impose the restrictions was brought before the Judiciary, and on the decision of the Supreme Court of the United States, sustaining the acts, there was an end of the matter. On the final repeal of the non-intercourse laws, the capital of the East was again embarked in commerce. In 1816 a tariff, protective in its character, and supported by the late distinguished statesman of South Carolina, and by the South generally, was passed. This law operated to check, to some extent, importations, and rendered capital employed in commerce less productive. The North, entertaining the belief that the Government would adhere to the policy of the act of 1816, turned their attention to, and embarked in the hazardous experiment of manufacturing. This became a lucrative business, when controlled by prudence and skill. It was but a few years before southern gentlemen began to denounce the protective policy, though it originated with them, and the opposition to it became so ardent that at one time it threatened to lead to a civil war. Southern views and feelings, however, were at length yielded to. The tariff acts were modified, and the South relieved from a system which they regarded as oppressive. This is not a fitting occasion to enter into a consideration of the propriety and expediency of this change in our tariff system. I do not desire to express any opinion upon that subject at this time. Reference has been made to the subject for the purpose of showing that the legislation of Congress has been in accordance with, rather than adverse to, the views of the South. Instead of there being any just grounds of complaint on the part of our southern friends, that the action of Congress and of the Representatives from the free States, has been in opposition to their rights and feelings, the whole history of the Government shows that the North have invariably yielded to the demands of the South. These concessions have been made from a spirit of conciliation, of forbearance—from a desire to live in peace and harmony with our southern brethren—thus furnishing the strongest possible evidence of attachment to the Constitution, to the Union. Will our southern friends insist that we must yield to their views on all occasions, or they will separate from us? They can hardly expect we shall do so on every occasion, and for one, I am not disposed to on the present.

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